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Paper No. 20

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**COPY MAILED**

**JUL 20 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Turak et al. :  
Application No. 09/369,508 : ON PETITION  
Filed: August 6, 1999 :  
Title: Combination Swimming, Walking,  
Running, Massage, Therapeutic, And  
Recreational Device :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 26, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to submit formal drawings and the issue fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed January 23, 2002. Accordingly, the above-identified application became abandoned on April 24, 2002. A Notice of Abandonment was mailed on June 10, 2002.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

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<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup> The instant petition lacks items (1) and (2).

In regard to item (1), petitioner submitted a Continued Prosecution Application (CPA) with the instant petition. Effective July 14, 2003, the Continued Prosecution Application (CPA) process was eliminated in utility and plant applications. A CPA received after the above date is now being treated as a Request for Continued Examination (RCE). As an RCE, the request lacks the submission required by 37 CFR 1.114. As set forth in 37 CFR 1.114, the submission may be a previously filed amendment(s) after final rejection. A submission may also include an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. Petitioner also stated that a check for \$475.00 was enclosed. However, a review of USPTO financial records indicates that the check was never received. Accordingly, \$395.00 is required for the RCE fee.

Further, 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned lapsed for failure to pay the issue fee. Therefore, the filing of a continuing application without payment of the issue fee or any outstanding balance thereof is not an acceptable reply in an application abandoned or patent lapsed for failure to pay the issue fee or any portion thereof. Petitioner should submit the issue fee, which is now \$700.00.

In regard to item (2), there does not appear to be a petition fee submitted with the instant petition. Accordingly, the \$750.00 petition fee is also required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS  
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By hand: Customer Window located at:  
U.S. Patent and Trademark Office  
Customer Service Window Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

By fax: (571) 273-8300  
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

*Liana Chase*  
Liana Chase  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).